



Department of Corrections
ADMINISTRATIVE BULLETIN

**Subject: FEDERAL ARMED
CAREER CRIMINAL ACT**

Number:

92/5

Date Issued:

January 21, 1992

Cancelled Effective:

The purpose of this Administrative Bulletin is to advise the California Department of Corrections (CDC) staff of recent federal regulations and the impact they will have on departmental operations. Federal firearm laws provide the authority to prosecute selected violent career criminals and to impose upon them severe sentences to federal institutions. This bulletin will briefly discuss provisions of the Federal Armed Career Criminal Act (ACCA), the federal agencies responsible for enforcing the Act and their roles, the criteria for selecting offenders to be prosecuted under the Act, and the role and responsibilities of associated divisions within the Department (see Attachment 1).

I. The Federal Armed Career Criminal Act

Since 1986 several amendments have been made to the original Gun Control Act of 1968 which provide for severe federal penalties for individuals convicted of the illegal possession, sale or transfer of firearms. The ACCA mandates a minimum sentence of 15 years and authorizes sentences up to life without parole for felons who possess firearms or ammunition and who have three or more convictions for violent felony offenses, serious drug offenses, or a combination of both. The essential feature of ACCA is an enhanced penalty scheme for repeat offenders who persist in possessing firearms or ammunition.

The key to the sentence enhancement of ACCA is conviction under the federal felon in possession statute, Title 18, United States Code (U.S.C.), Section 922(g). The elements of the felon in possession offense require:

1. Know possession of a handgun, long gun, or ammunition;
2. Affect on interstate or foreign commerce. Any minimal affect on commerce qualifies, whether past or present. For example, the requirement is met by establishing out-of-state manufacture of the weapon or ammunition; and
3. Adult felony conviction, either state or federal.

Felons who possess firearms and have three qualifying prior convictions are subject to ACCA's enhanced penalties. A defendant is entitled to a jury trial on the underlying felon in possession charge but not on the ACCA allegation. the ACCA allegation regarding prior violent felony conviction is proved at the time of sentencing simply by establishing, by a preponderance of evidence, that the defendant has suffered three qualifying priors before the date he unlawfully possessed the firearm or ammunition. The defendant must have three prior felony convictions which is either a "violent felony," a "serious drug offense," or a combination of both.



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A violent felony is defined in Title 18, U.S.C., Section 924(c)(1) and 924(e)(1) as any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult that:

1. Has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another:
2. By its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; or
3. Is burglary (structural, commercial, or residential), arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

Violent felonies also include those crimes defined in Section 667.5 of the California Penal Code including murder, voluntary manslaughter, mayhem, rape, sodomy by force, oral copulation by force, lewd acts on a child under 14, robbery, arson, explosion with intent to murder, any felony punishable by death or imprisonment in the state prison for life, or any felony in which the defendant inflicts great bodily injury or uses a firearm.

A "serious drug offense" means a federal drug offense for which a maximum term of imprisonment of ten or more years is prescribed by law, or an offense under state law involving the manufacture, distribution, or possession with intent to manufacture or distribute a controlled substance for which a maximum term of imprisonment of ten years or more is prescribed by State law. It should be noted that no single drug offense under California law qualifies as a serious drug offense. In California, a maximum term of imprisonment of ten years or more for a drug offense can only be imposed through sentence enhancements for persons with certain prior convictions or through additional terms for convictions under specified sections as defined in Sections 11370.2, 11370.4, 11379.8, and 11380.1 of the Health and Safety Code of California.

For a defendant who is convicted of being a felon in possession of a firearm and who is also an armed career criminal, the statutory penalties require a minimum of 15 years imprisonment and a maximum of life imprisonment. The sentencing guidelines also provide for enhanced penalties under certain conditions that increase the applicable guideline to 30 years to life.



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II. Projects Triggerlock and Achilles

Two federal agencies are primarily responsible for enforcing ACCA: the United States (U.S.) Attorney's Office and the U.S. Treasury, Bureau of Alcohol, Tobacco, and Firearms (ATF). The U.S. Attorney is responsible for prosecution and ATF is responsible for enforcement.

The four California district offices of the U.S. Attorney, under the lead of a senior prosecutor and with the assistance of a project coordinator, are responsible for Project Triggerlock. While the details are still being developed, Project Triggerlock cases will receive special handling. They will not be plea bargained. There will be a relaxation of the present policy against dual prosecution and periodic reporting of the project's statistics to the U.S. Attorney.

Project Achilles is administered by ATF. The project is directed at targeting, investigating, and prosecuting those individuals who qualify for mandatory and enhanced sentencing under ACCA. At the present time, all of the 22 law enforcement districts across the U. S. are participating in Project Achilles. Most districts have either established formal task forces or have dedicated agents to target and investigate potential Project Achilles' violators.

III. The Role and Responsibilities of CDC

Projects Triggerlock and Achilles offer CDC an invaluable resource for managing parolees and parole violators. As a result, both CDC's interests and the interests of public safety will be served by integrated coordination among federal, state, and local agencies. Therefore, CDC staff is required to promote the goals and objectives of these projects through cooperation with the U.S. Attorney and ATF representatives (please see Attachments 2 and 3 for the designated contacts from both agencies).

A. Identification Process

All CDC offenders who meet the following criterion are to be considered for referral to the regional Project Achilles ATF representative:

A defendant who has three prior convictions for a violent felony or a serious drug offense or both, and who possesses, transports, ships or receives firearms or ammunition according to Title 18, U.S.C. Sections 924(e)(1) and 922(g)(1).



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B. Correctional Counselor Responsibilities

Correctional Counselors will identify eligible offenders during the standard completion of CDC Form 611, Release Program Study/Parole Assessment, as described in the Department Operations Manual (DOM) in Volume VII, Section 74060.4 The Notification Section in the newly revised CDC Form 611 includes a box which is labeled, "Title 18, U.S.C., Sect. 922(g)(1)." Checking this box notifies the Parole and Community Services Division (P&CSD) that the "Offender has three previous and separate convictions by an court(s) for violent felonies, as defined in Title 18, U.S.C., Section 924(e)(1) and further defined in Section 667.5 of the California Penal Code." Supplies of CDC Form 611 are available to order through local procurement via order Code 2 as defined in the CDC Forms Catalog. Existing supplies of CDC Forms 611 may be utilized by simply highlighting the parenthetical sentence above in the Caseworker's Evaluation Section.

C. Parole Region Responsibilities

Each parole region is required to designate a representative who will be responsible for screening, referring, and recording cases that qualify under the above-stated criterion. Regional Parole Administrators will ensure that each unit within their region is advised of the identity of the regional parole representative who is selected.

The regional parole representative will be responsible for:

1. Reviewing CDC Forms 611 from correctional counselors for ACCA eligibility.
2. Flagging folders identified as ACCA cases prior to assignment to parole units.
3. Screening ACCA cases from parole agents regarding suitability for ATF referral.
4. Immediately referring appropriate cases to ATF upon the review and approval of a Parole Administrator I or a higher classification.
5. Assisting ATF and the U.S. Attorney's Office with access to the Central File.
6. Maintaining a file on all ACCA cases that have been identified by a correctional counselor or referral completed violation report and final case disposition.



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7. Reporting monthly to the Deputy Director of P&CSD and the Special Projects Branch of the Evaluation and Compliance Division regarding the number, identity, and disposition of cases (a) identified as having three qualifying prior convictions, (b) flagged for assignment to parole units, (c) referred to the regional parole representative by special agent of record, and (d) referred to ATF.

The Special Projects Branch of the Evaluation and Compliance Division will provide informational packets to each parole region, institution, and the Law Enforcement Liaison Unit (LELU) by January 31, 1992.

D. Referral Process

The referral process will be initiated by either the parole agent of record or a special agent of LELU after discovery of a firearm or firearm-related violation. The agent discovering the violation will assess the offender's suitability for federal prosecution based upon a cursory comparison of the offender's prior criminal convictions and the above criterion. If the offender has three prior convictions for a violent felony or a serious drug offense or a combination of both, the special agent will refer the matter directly to the ATF representative and the agent of record will refer the matter to the regional parole representative. If the referral is made to the regional parole representative, the case will be reviewed and forwarded to ATF if it meets the ACCA criterion.

The referral to the ATF representative may be made in writing or by telephone. The referral to ATF will be consistent with the time requirement for a violation report and will be concluded within six working days following discovery of the firearms violation. The referral should contain the name of the offender, his/her current whereabouts, his/her criminal history, and a description of the circumstances under which the offender was found possessing, transporting, shipping, or receiving firearms or ammunition.

The parole agent of record will discuss the offender's suitability for ACCA prosecution during the completion of the violation report to the Board of Prison Terms as detailed in the DOM Volume VIII, Section 81040.

The agent will state in the evaluation section of the violation report that the offender has at least three prior ACCA felony convictions and that the case has been referred to either ATF or the regional parole representative.



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The parole agent of record will also forward a copy of the violation report to the regional parole representative who will maintain a file on all ACCA cases and their disposition.

In addition, established policy and procedure as detailed in the DOM is to be followed regarding parole searches and arrests. In the event that a parole agent seizes evidence during an ACCA arrest, particular adherence to DOM Volume III, Section 85060 shall be made pertaining to the "Storing of Evidence Procedures." Also, a parolee who is arrested and considered to be an ACCA candidate is to be held in custody pursuant to the Arrest and Parole Hold policy as stated in the DOM Volume VIII, Section 81030.

E. Investigation Process

During the course of the investigation of ACCA cases by the U. S. Attorney's Office and ATF, it is reasonable to assume that both agencies will request access to correctional case records. The regional parole representative will be the principal source for access to the offender's Central File. Correctional case records managers should also be appraised of the above and be prepared to respond to requests for information.

All requests to disclose information from a departmental record or to receive copies of information will comply with the provisions of the DOM as described in Volume I, Section 13030. Information from the offender's Central File will be handled in the same manner as any routine request by an attorney.

Please see that all personnel concerned are informed of the contents of this bulletin which shall remain in effect until incorporated into the appropriate sections of the DOM. Direct any inquiries regarding this bulletin to Paula A. Billeci, Associate Governmental Program Analyst, Special Projects Branch, at (916) 324-7066 or ATSS 454-7066.

R. H. DENNINGER
Chief Deputy Director

Attachments